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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

INEZ YSLAS,

Plaintiff and Appellant,

v.

ALEJANDRO ROMERO et al.,

Defendants and Respondents.

B204762

(Los Angeles County  
Super. Ct. No. GC035904)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Joseph F. Devanon, Jr., Judge. Affirmed.

Stuart W. Knight and Inez Yslas, in pro. per., for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

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A financially distressed homeowner agreed to sell real property to a real estate broker. The homeowner paid for an option to repurchase the property; however, she defaulted on the terms of the option. As a result, the option was forfeited and the property was sold to a third party. The homeowner sued claiming that the option was not forfeited, so the property could not properly be sold to a third party. At trial, the court gave judgment to the real estate broker who entered the option agreement. We affirm.

### **FACTS**

Appellant Inez Yslas owned real property on Summit Avenue in Pasadena (the Property). In 2003, Yslas had financial difficulties and was unable to meet her mortgage obligations. The Property went into foreclosure.<sup>1</sup> The foreclosure papers indicate that Yslas owed \$207,135 on the Property.

While foreclosure proceedings were pending, Yslas was contacted by a real estate professional who “said he would stop the foreclosure” and “help me save my property.” This person told respondent real estate broker Alejandro Romero about the Property. On October 9, 2003, Yslas sold the Property to Romero for \$300,000. Romero obtained a loan to purchase the Property. A grant deed was recorded transferring the Property from Yslas to Romero.<sup>2</sup>

The purchase agreement for the Property incorporates by reference an option agreement dated September 19, 2003 (the Option). The Option gave Yslas the right to repurchase the Property from Romero within two years for \$270,000. In consideration of the Option, Yslas disbursed to Romero through escrow \$81,000.

The Option contains conditions. In particular, it provides that (1) Yslas “agrees to manage” the Property and “will be responsible for all maintenance and tenancy for the

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<sup>1</sup> Yslas lost two other properties in foreclosure, as well.

<sup>2</sup> At trial, Yslas claimed that the signature on the deed was a forgery. The trial court found that Yslas signed the deed. On appeal, Yslas does not challenge the court’s factual finding.

property”; (2) all rents from the tenancy had to be paid directly to a real estate agency, which would disburse money for the mortgage, insurance and taxes to Romero and give any overage to Yslas; (3) Yslas’s right to exercise the Option would be lost if Romero has given Yslas “two or more notices to cure any default or non-performance”; and (4) Yslas was “required to maintain sufficient tenancy for the subject property to support minimum gross rents of principle [*sic*], interest, insurance and taxes.”

Yslas rented the Property to Randy Sydnor for \$1,900 per month. Yslas and Sydnor have a long-standing relationship. Sydnor moved into the Property in 2000, but did not pay rent until the Option was signed. Once the Option was in place, he made monthly rental payments to Romero’s agent. Yslas told Sydnor that he was obligated to make those payments to remain at the Property: she understood that the Option would be breached if Romero did not receive rent. At the same time, she did not think she had any responsibility to ensure that the rent was paid.

In April 2005, Romero called Yslas and informed her that the Option was in default because Sydnor had not paid rent for months. Yslas described herself as “devastated” when she heard this news. In May 2005, she obtained loan approval to repurchase the Property, but Romero refused to sign the escrow papers. Yslas did not give Romero notice that she was exercising the Option because she did not realize that it was necessary to do so.<sup>3</sup>

Romero recalls telling Yslas that Sydnor “hadn’t paid his rent”; he reminded her that she would lose the Option if the rent was not paid. Romero and Yslas discussed the possibility that Sydnor might buy the Property. Romero tried to arrange financing for Sydnor, but Sydnor failed to qualify for a loan due to his credit problems. However, another mortgage broker arranged a hard money loan for Sydnor. In January 2005, Sydnor decided that he “wasn’t going to pay another dime” in rent until Romero agreed

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<sup>3</sup> The Option requires delivery of “a written unconditional notice of exercise, signed by the Optionee . . . .”

to sell the Property to Sydnor. Sydnor testified that his final rent payment for the Property was made in December 2004.

On May 4, 2005, Romero gave Yslas written notice that the rent was in default on the Property. In a “Notice to Optionee to Perform,” Romero advised Yslas that the rent was in default in the amount of \$7,672 for the rental period ending April 30, 2005. The notice states, “If you do not cure the referenced default(s) within 7 days of the date of this notice, you may lose rights to exercise the referenced option or in the case of multiple defaults, the option may be terminated.”

Yslas testified that the May 4 notice informed her that the rent was in arrears and that she had a problem with the Option. She told Sydnor that she had received the notice. Although she had concerns about Sydnor’s rental payments, she did not ask him whether his rent was current.

Yslas received from Romero a “Notice to Optionee of Default” dated May 20, 2005. The notice references the Option, the purchase agreement, and “the residential lease after sale.” Romero characterized this last item as “a typo” because there is no residential lease between him and Yslas. The notice advised Yslas that the amount of the default “in her monetary obligations to make payments” was \$9,590 for the period ending May 31, 2005. Yslas did not send any money in response to the notice, because she did not have \$9,000 to bring the rent current. At the time she received the notice, Yslas had no money in the bank. Yslas did not understand the May 20 notice to mean that she was in default under the Option.

On May 26, 2005, Romero entered an agreement to sell the Property to Romeo Sagastume for \$380,000. Sagastume worked as an independent contractor processing loans for Romero. Romero netted \$97,025 from the sale of the Property. Sagastume testified that he was unaware of the Option. On September 6, 2005, Yslas signed a letter drafted by her attorney, purporting to exercise the Option. Romero did not respond to the letter.

Yslas sued Romero for fraud for allegedly forging the deed transferring the Property to him in order to deprive Yslas of her equity and her option rights. She also

sued for breach of the Option and the purchase agreement.<sup>4</sup> Trial was by the court. At the close of Yslas's case, Romero moved for judgment. The court found that (1) Yslas is not protected by the provisions of the Civil Code because the Property was not her primary residence; (2) the Option required Yslas to maintain the Property in order to satisfy the mortgage on it, which she failed to do because she did not ensure that Sydnor paid his rent; (3) the grant deed was not forged; and (4) Sagastume is a bona fide purchaser for value. In sum, the court wrote, plaintiff "has failed to carry her burden as to all causes of action." The court gave judgment to Romero on October 25, 2007. An appeal from the judgment was taken on December 18, 2007.

## **DISCUSSION**

### **1. Appeal And Review**

After the plaintiff completes her presentation of evidence in a court trial, the defendant may move for judgment. When the motion is made, "[t]he court as trier of the facts shall weigh the evidence and may render a judgment in favor of the moving party . . . ." (Code Civ. Proc., § 631.8, subd. (a).) The judgment is appealable. (Code Civ. Proc., § 904.1, subd. (a)(1).)

When considering a motion for judgment, the trial court "may refuse to believe witnesses and draw conclusions at odds with expert opinion. [Citation.] Its grant of the motion will not be reversed if its findings are supported by substantial evidence." (*Jordan v. City of Santa Barbara* (1996) 46 Cal.App.4th 1245, 1255.) In reviewing the grant of a motion for judgment, "[w]e resolve all evidentiary conflicts in favor of the prevailing parties, and indulge all reasonable inferences possible to uphold the trial court's findings." (*Id.* at pp. 1254-1255.)

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<sup>4</sup> Yslas sued other parties as well, none of whom are involved in this appeal.

## **2. Sufficiency Of The Notices Of Default**

Yslas concedes that the Option could “be forfeited if there were two separate notices to perform.” She argues that the two notices from Romero were insufficient to result in a forfeiture of the Option. None of Yslas’s arguments are compelling.

Yslas maintains that “only one notice [was] received,” rather than the two notices required by the Option. Specifically, she contends that the notice of May 4, 2005, was not received. Yslas’s contention that she did not receive the first notice is refuted by her trial testimony, in which she admitted that she received *both* of Romero’s notices.

Yslas asserts that the notices are ambiguous and do not refer to any breach of the Option. The notices are clear. The notice of May 4 states that “Optionee is in default in its monetary obligations to make payments.” It further states (in bold print) that the default had to be cured within seven days, or Yslas “may lose rights to exercise the [ ] option,” and “the option may be terminated” in the event of multiple defaults.

Yslas testified that the May 4 notice informed her that the rent was in arrears and that she had a problem with the Option. She discussed the May 4 notice with Sydnor, but did not demand that he pay the overdue rent owing since January 2005. As to the May 20 notice, Yslas testified that she did not respond to it because she had no money to bring current the \$9,000 in rental arrearages.

Yslas contends that the notices were ineffective because they referenced a residential lease, though the parties did not enter into a lease. Yslas could not have been misled by the notices. The first was entitled “Notice to Optionee to Perform,” and the second was a “Notice to Optionee of Default.” Thus, the notices were addressed to Yslas in her role as optionee under the Option. Yslas testified that she understood the first notice to mean that Sydnor’s rent was in arrears and that she had a problem with the Option. And although Yslas testified that she did not understand the second notice to mean that she was in default, this testimony is not believable, inasmuch as the document says, in large, boldface font, that it is a notice of default on the Option.

It is clear that Romero was proceeding under the Option when he gave the notices to Yslas. Both parties recall having a conversation in April 2005 regarding Sydnor’s

arrearages. Romero reminded Yslas that she could lose the Option if Sydnor failed to pay the rent. Yslas described herself as “devastated” when she received this news, yet she did nothing to cure the arrearages herself or ensure that Sydnor paid what he owed. Yslas received proper notice that she was in danger of forfeiting the Option.

### **3. Yslas Had A Duty To Ensure That Rent Was Paid**

The crux of Yslas’s argument is that she had no duty under the Option to ensure that Romero received payments. Yet the terms of the Option state that Yslas is “responsible for all . . . tenancy for the property.” The Option also requires that Yslas “maintain sufficient tenancy” such that the gross rents covered the mortgage, insurance and taxes. Although the Option calls for rental payments from the tenant to be made directly to Romero’s agent, this did not absolve Yslas of her responsibility to put a *paying* tenant in the Property. By putting a nonpaying tenant such as Sydnor in the Property, Yslas defaulted on her obligation to “maintain sufficient tenancy” to cover the mortgage, insurance and taxes.

In this case, given the long-standing relationship between Yslas and Sydnor, Yslas could have demanded that Sydnor pay his rent arrearages, particularly since he had lived on the Property from 2000 to 2003 without paying any rent at all. In his testimony, Sydnor claimed to have the money with which to satisfy his rental obligation, but he unilaterally decided that he “wasn’t going to pay another dime” until Romero agreed to sell the Property to him. Yslas knew by April 2005 that Sydnor had stopped paying rent: she admitted to a conversation with Romero regarding the rental arrearages. But Yslas took no action to “maintain sufficient tenancy.” To comply with the Option, she had to (1) demand payment from Sydnor, (2) get a new tenant, or (3) pay the rent herself and allow her friend Sydnor to live rent-free at the Property.

Yslas, in collaboration with Sydnor, gambled that they could default on payment for months, in violation of the Option’s requirement that Yslas “maintain sufficient tenancy” on the Property. As it turns out, they gambled badly. After receiving two notices of nonperformance and default from Romero regarding her failure to maintain a tenancy sufficient to cover Romero’s expenses, Yslas lost her right to exercise the

Option. Romero subsequently had the right to sell the Property to a third party, Romeo Sagastume.

**DISPOSITION**

The judgment is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

CHAVEZ, J.